

**6690. Adulteration of frozen eel pout fillets. U. S. v. 28 Cartons of Frozen Eel Pout Fillets. Default decree of condemnation and destruction. (F. D. C. No. 12086. Sample No. 76403-F.)**

**LIBEL FILED:** March 25, 1944, Southern District of New York.

**ALLEGED SHIPMENT:** On or about March 8, 1944, by Captain Jimmy Lawrence, New London, Conn.

**PRODUCT:** 28 cartons, each containing 20 pounds, of frozen eel pout fillets at New York, N. Y.

**VIOLATIONS CHARGED:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of parasitized fish; and, Section 402 (a) (5), it was in whole or in part the product of a diseased animal.

**DISPOSITION:** April 14, 1944. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

**6691. Adulteration of canned, flaked fish. U. S. v. 1,365 Cases of Canned Flaked Fish. Tried to the court. Judgment ordering condemnation and destruction of a portion of the product and release of the remainder to the claimant. (F. D. C. No. 7935. Sample No. 87905-E.)**

**LIBEL FILED:** July 17, 1942, Eastern District of Virginia.

**ALLEGED SHIPMENT:** On or about June 13, 1942, by the Davis Bros. Fisheries, Inc., from Gloucester, Mass.

**PRODUCT:** 1,365 cases, each containing 24 1-pound cans, of flaked fish at Richmond, Va.

**LABEL, IN PART:** (Cans) "Davis Bros. Flaked Fish Haddock and Codfish."

**VIOLATIONS CHARGED:** Adulteration, Section 402 (a) (3), the product consisted, in whole or in part of a decomposed substance.

**DISPOSITION:** March 18, 1943. The Davis Bros. Fisheries, Inc., claimant, having filed an answer denying that the product was adulterated, trial was had before the court. Evidence having been introduced on behalf of the Government and the claimant, the court, on July 3, 1943, handed down the following findings of fact and conclusions of law:

**POLLARD, District Judge:** "The United States filed its libel in this case, seeking the condemnation under the Federal Food, Drug and Cosmetic Act (Title 21, Section 301, et seq. U. S. C. A.) of 1365 cases, more or less, each containing 24 cans of an article labeled in part 'Davis Bros. Flaked Fish, Haddock and Codfish Seasoned with Salt Contents 1 lb. \* \* \*' the said above described cans of fish being shipped by the Davis Brothers Fisheries Company, Inc., from Gloucester, in the State of Massachusetts, to and into the State of Virginia, to the Bellwood Depot or Quartermaster Depot, located in Chesterfield County, Virginia.

"The libel charges that the said article of food is adulterated within the meaning of Title 21 Sec. 342 (a) (3) U. S. C. A. The bill of particulars filed by the Government alleges that said article of food is rotten and stinks and consists of a decomposed substance. The answer denies all the material allegations of the libel which would justify condemnation of the food. By stipulation of the parties a trial by jury was waived.

"From the evidence taken on the issues raised by the pleadings, the Court makes the following findings of fact.

#### "FINDINGS OF FACT

"1. The libel for condemnation was filed July 17th, 1942. An attachment and monition were filed on July 17th, 1942, and in obedience to said attachment and monition, the United States Marshal for the Eastern District of Virginia seized 1365 cases, more or less, each containing 24 cans of an article labeled 'Davis Flaked Fish Haddock and Codfish' and Coded 'FU-10', 'FU-19' and 'FU-22'.

"2. The articles of food seized consist of three packs known as 'Codes' and designated as 'Code F. U. 10', 'F. U. 19', and 'F. U. 22'.

"3. Said articles of food were shipped in interstate commerce and at the time they were seized were within the jurisdiction of this Court.

"4. There were taken from each of the three packs or codes, two lots or samples. The first samples were seized by the Food and Drug Administration. The second samples were taken by order of Court and one-half thereof was delivered to the Food and Drug Administration and the residue to the defendant.

"5. The first samples taken were examined by Dr. Hunter, Chief of the Govern-